

Appl. No.10/043,844
Amdt. dated December 8, 2004
Reply to Office Action of August 13, 2004

REMARKS

Claims 1-16 are present in the application. Claims 1, 7, 9, and 15 are currently amended. Claim 17 and 18 are cancelled.

Applicant expresses his gratitude for the courtesy of a telephone interview initiated by Examiner Johnson. Examiner Johnson indicated that suitably amended claims would be patentable if the Primiano U.S. 6,615,995 reference was overcome by a showing of a prior date of invention by Applicant pursuant to 37 CFR § 1.131.

As suggested by the Examiner, all independent claims have been amended to delete the closed-ended term "consisting of" (which the Examiner believed might be deemed inconsistent with the language "at least two") and replaced it with the open-ended term "comprising."

Applicant respectfully submits that Primiano discloses an extension of a track only through the use of "track segments called extensions [which] can be added to increase the length of the track device to accommodate longer shelves. Extensions differ from intermediate track segments in the size of the keys and keyways" (col. 2, lines 28-32). The distinction between the extensions and actual track segments (such as might be obtained from cannibalizing of an identical track) is clear. "All keyways have the same dimensions, but the keys have different dimensions with the rear track segments and extensions having the largest dimensions to prevent vertical separation" (col 5, lines 12-40, especially lines 35-38). Accordingly, Primiano does not teach the use of "two essentially identical standard depth display tracks for forming a single depth extended display track," but rather only a standard depth display track and one or more separately

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manufactured "extensions." Accordingly, the track manufacturer must manufacture and store not only the track purchased but also various extensions in order to permit the purchaser to variably extend the depth of the track purchased.

None of the five figures of Primiano shows "at least two essentially longitudinally-extending standard depth display tracks," as required by Applicant's claims, except in side-by-side relationship, nor does any figure show "forming a single depth-extended display track from one of said two standard depth display tracks and at least one section of the other of said two standard depth display tracks in longitudinal alignment with said one standard depth display track," as also required by Applicant's claims.

The Examiner's argument that one could extend the Primiano track by scavenging intermediate segments from another Primiano track requires one to ignore the explicit teaching of Primiano to the effect that extension of a Primiano track is accomplished by using the separately formed track extensions (which are not part of any standard length Primiano track). At the very most it could be argued by the Examiner that it would be obvious to try to substitute one or more intermediate segments from the second track into the first track, but it is by no means clear that such an attempt would be successful without changes in the dimensions of various keys and/or keyways.

In any case, Applicant appends the requested Declaration under Rule 131 showing invention of the subject matter prior to the effective date (that is, the October 31, 2001 filing date) of Primiano, et al. Applicant's diligence is proved by filing of the present application on January 14, 2002, within only two and one-half months of the Primiano filing date.

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In view of the above amendments and remarks, reconsideration of the rejection and allowance of all claims is respectfully requested.

If an extension of time is required to enable this document to be timely filed and there is no separate Request for Extension of Time, this document is to be construed as also constituting a Request for Extension of Time Under 37 C.F.R. § 1.136(a) for a period of time sufficient to enable this document to be timely filed. Any fee required for such a Request for Extension of Time and any other fee required by this document pursuant to 37 C.F.R. §§ 1.16 and 1.17 and not submitted herewith should be charged to the Deposit Account of the undersigned attorneys, Account No. 01-1785; any refund should be credited to the same account. One copy of this document is enclosed.

Respectfully submitted

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